

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 23-CR-196-JFH

CESAR DAVID LOPEZ,

Defendant.

OPINION AND ORDER

Before the Court is a sealed motion to declare complex and to continue trial for 120 days (“Motion”) filed by the United States of America (“Government”). Dkt. No. 50. The Motion states Defendant Cesar David Lopez (“Lopez”) does not oppose either request. *Id.* at 3. For the reasons set forth below, the Motion is GRANTED IN PART AND DENIED IN PART. It is granted insofar as the Court will declare the case complex and grant a continuance and denied insofar as it requests a 120-day extension, as the Court will continue the case for approximately 90 days.

The Superseding Indictment in this case charges three (3) Defendants with seven (7) counts involving firearms trafficking, smuggling firearms from the United States, straw purchasing a firearm, and false statement in the attempted acquisition of a firearm. Dkt. No. 37. For the reasons set forth in the sealed Motion, pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii), the Court finds that this is a complex case and that it is unreasonable to expect adequate preparation for pretrial proceedings and trial itself within the limits established by 18 U.S.C. § 3161. The Court further finds that the ends of justice served by granting the continuance requested outweigh the interests of the public and the Defendants in a speedy trial. Thus, pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii), the ends of

justice dictate that the period of delay shall be excludable in computing the time from which the Superseding Indictment was filed and the time within which the trial of this action must commence.

Additionally, of three (3) Defendants, only Lopez has entered an appearance. The Motion states the other two Defendants, Juan Antonio Duran (“Duran”) and Jose Nicolas Flores (“Flores”), “are currently in federal custody in the Northern District of Alabama pending trial.” Dkt. No. 50 (sealed) at 2. The Court notes that no writ of habeas corpus ad prosequendum nor set of Rule 5 papers has been filed for either Duran or Flores. The Court has a strong preference for co-defendants to be tried together. *See United States v. Williams, et al.*, Case No. 22-CR-152-JFH, Dkt. No. 54 (E.D. Okla. Jan. 18, 2023) (extending scheduling order over appearing defendant’s objection where co-defendants were in the process of being arrested, arraigned, and potentially transported from other districts, and finding the ends of justice were served by continuing the case to allow simultaneous prosecution against co-defendants); *United States v. Jones*, 530 F.3d 1292, 1298 (10th Cir. 2008) (explaining that liberal joinder of co-defendants’ trials “enhance[s] the efficiency of the judicial system” and that “the Supreme Court has long recognized that joint trials conserve state funds, diminish inconvenience to witnesses and public authorities, and avoid delays in bringing those accused of crime to trial”). Since Duran’s and Flores’ whereabouts are apparently known to the Government, the Court expects that the additional time granted by a continuance will allow for their transportation to this District.

IT IS THEREFORE ORDERED that the sealed motion to declare complex and motion to continue filed at Dkt. No. 50 is GRANTED IN PART AND DENIED IN PART. The jury trial set for November 6, 2023 at 8:45 a.m. is stricken. The following amended scheduling order is hereby entered:

Joint status reports regarding production of discovery filed: 10/26/2023

11/30/2023

12/28/2023

Notices filed: 12/28/2023

This includes all notices required by the Rules of Criminal Procedure and Evidence, including but not limited to, notices pursuant to Rule 16, 404(b), 412, 413, 414, or 609.

Motions and objections to notices filed: 1/4/2024

Absent good cause, motions in limine shall be filed by this date

Motions for bill of particulars shall be filed pursuant to FRCrP 7(f)

Pretrial conference: 1/25/2024 at 9:30 am

Voir dire, jury instructions, stipulations, & trial briefs filed: 1/26/2024

Witness and exhibit lists exchanged between counsel and
emailed to courtroom deputy (do not file): 2/1/2024 by 4:00 pm

Three hard-copy exhibit binders delivered to Court: 2/1/2024 by 4:00 pm

Jury trial: 2/5/2024 at 8:45 am

Due to the Court's multi-district caseload, this schedule is relatively inflexible.

Pursuant to LCrR 47-2, any response shall be filed within seven days of any motion's filing. Replies are not permitted without leave of Court. If leave is granted, replies shall be limited to five pages.

Only one omnibus motion in limine per party and one motion to suppress per defendant is permitted without leave of Court.

The Court shall summarily deny without prejudice any motion that does not comply with LCrR 47-4, which requires a motion state on the first page whether or not it is opposed and, if opposed, state whether concurrence was refused or explain why concurrence could not be obtained.

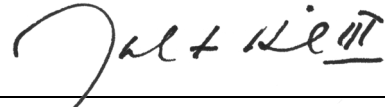
The parties should meet and confer in good faith to discuss any stipulations that would streamline the issues at trial. Any stipulations agreed to should be submitted by the date listed.

If the parties anticipate a lengthy pretrial/motion hearing, they are directed to promptly contact the Courtroom Deputy and the hearing will be reset.

If the parties anticipate a plea of guilty, they are directed to promptly contact the Courtroom Deputy and a change of plea hearing (separate from the pretrial docket call) will be set. The parties must provide a petition to enter plea of guilty and any plea agreement (if applicable) to the Court and file any superseding information (if applicable) at least three business days prior to the change of plea hearing.

The parties are encouraged to review the Court's [Criminal Guidelines](#).

Dated this 18th day of September 2023.

A handwritten signature in black ink, appearing to read "John F. Heil, III", written in a cursive style.

JOHN F. HEIL, III
UNITED STATES DISTRICT JUDGE